

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

August 20, 1991

Mr. REDACTED TEXT
Controller, REDACTED TEXT Corporation
Los Angeles, California 90063

RE: SR AA REDACTED TEXT

Dear Mr. REDACTED TEXT:

The Legal Division has assigned your letter of July 9, 1991, to me for a response. You have requested advice as to the proper sales or use tax rate to apply to sales of envelopes to a customer of REDACTED TEXT Company ("REDACTED TEXT") located in Sacramento County.

You recite the factual context of your problem as follows:

"Envelopes for our Sacramento customer are manufactured and warehoused at our facility in San Mateo County. We invoice the customer and they take title for these envelopes at the times they are placed in our warehouse. These envelopes are then delivered to the customer (upon their request, in one or more shipments) in Sacramento County.

We conclude that the sales contract requires that REDACTED TEXT ship the envelopes to the customer in Sacramento County and that the request to which you refer affects only whether or not the order is shipped all at once or in batches. REDACTED TEXT has been applying the San Mateo County sales tax rate, but the customer contends that the applicable sales tax rate is that for Sacramento County.

OPINION**A. Transactions and Use Tax****1. Generally**

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051, et. seq., and 6201, et. seq.), and the Bradley-Burns Uniform Local Sales and Use Tax (§§ 7200 –7212). In 1969, the Legislature enacted the Transactions and Use (hereinafter "District") Tax Law. (Rev. & Tax. Code §§ 7251 et. seq.). Pursuant to various enabling statutes, a number of counties have established county-

wide taxing districts. To support such districts, transactions and use taxes are imposed at rates of 0.25% or 0.5% of the gross receipts from the sales within the district (or districts, if there is more than one in a county) of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption within the district is otherwise subject to tax. (§§7261(a)(1), 7262(a), 7285, 7285.5).

2. "Out-of-District" Exemption

These are some exceptions to the District Tax. Sections 7261 and 7262 require that each district imposing a tax ordinance must include in its ordinance certain uniform provisions. One of these required provisions exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside the district where the retailer ships to a point outside its district pursuant to a contract of sale between the retailer and the purchaser. (Section 7261 (a)(6).) In interpreting and applying this exemption, Title 18, California Code of Regulations, Regulation 1823(a)(2) provides that the transactions tax does not apply to gross receipts from sales of tangible property:

“(B) To be used outside the district when the property sold is shipped to a point outside the district pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. If the purchaser uses the property in a district imposing transactions (sales) and use taxes, the use tax may apply.”

B. Tax Consequences to REDACTED TEXT

We partially agree with REDACTED TEXT’s customer. Although, pursuant to the contract of sale, the customer takes title to the envelopes in San Mateo county, REDACTED TEXT contracts to ship them to Sacramento County. Therefore, under the above authority, San Mateo countywide district transactions (sales) taxes do not apply to this transaction.

However, the tax rate does include Sacramento countywide use tax (rather than transactions (sales) tax) since REDACTED TEXT’s customer actually uses the envelopes in Sacramento County. The customer owes the tax, but REDACTED TEXT might not be obligated to collect it. Whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect the district use tax from the purchaser depends upon whether the retailer is “engaged in business” in the purchaser’s district, as defined in Regulation 1827. In summary, Regulation 1827(b)(1) and (c) provides that if a retailer has either a place of business in a district, or has representatives or agents operating in a district, for the purpose of selling, delivering, or taking orders for tangible property, then the retailer is obligated to collect that district’s use tax from the purchaser if the retailer ships the property sold into the district, or participates in the district in making the sale. If

REDACTED TEXT is engaged in business in Sacramento County, as defined above, it is required to collect the countywide use tax (0.5%) on these sales.

For your information, I have enclosed a copy of Pamphlet No. 44-A, "Questions and Answers on District Taxes." I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

4025I

Enc.: Pamphlet No. 44-A